Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1992

BRENDA JONES, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF EVAN A.M. JONES, DECEASED,

Petitioner,

v.

PETTY-RAY GEOPHYSICAL GEOSOURCE, INC., et al.,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

1.

May a federal court in Texas sitting in diversity exercise jurisdiction over three related French corporations in a suit for the alleged wrongful death in Sudan of a British citizen whose Texas employer contracted with one of the French corporations where the contract was not related to his alleged death?

LIST OF PARTIES

As required by Supreme Court Rule 24.1(b), the following is a list of persons who were parties to the proceeding below in the United States Court of Appeals for the Fifth Circuit.

1. Petitioner Brenda Jones, Individually and as Administratrix of the Estate of Evan A.M. Jones, Deceased.
2. Respondent Total Exploration.
3. Respondent Total Soudan.
4. Respondent Total Compagnie Francaise des Petroles.

Since the trial court's order, Total Compagnie Francaise des Petroles has changed its name to "TOTAL." Neither Total Exploration nor Total Soudan, which are subsidiaries of TOTAL, own any other subsidiary corporations. As required by Supreme Court Rule 29.1, the following is a list of TOTAL's subsidiary corporations which are not wholly owned:

1. Cofidep S.A.
2. Societe Financiere D'Auteuil.
3. Total Raffinage Distribution S.A.
4. La Seigneurie SA.
5. Cray Valley SA.
6. Societe Industrielle et Financiere de Lens.
7. Total Mauritius Limited.
8. Total Exploration Production Cameroun.

LIST OF PARTIES

9. Omnium Insurance and Reinsurance Company.
10. Distrol S.A.L.
11. Bostik S.A.
12. Total Austria Gmbh.
13. Total Hearing.
14. Total Nigeria PLC.
15. Total Raffinaderij Nederalnd NV.
16. Borsele Hydrocracker BV.
17. Total Hungaria Kereskedelmi KFT.
18. Total Canada Oil & Gas Ltd.
19. Total Petroleum (North America) Ltd.
20. Societe Fonciere et Commerciale des Petroles.
21. Total Turkiye Anonim Sirketi.
22. Total Energy Resources (Hong Kong) Ltd.
23. Total Energy Services (Hong Kong) Ltd.
24. Total Hutchison Energy Limited.
25. Compagnie Franco Tunisienne des Petroles.
26. Dubai Marine Areas Ltd.
27. Total and Partners Corp.
28. Total Saudi Corp.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

LIST OF PARTIES ii

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

1. Proceedings in the Courts Below 1

2. Statement of Facts 3

Exploration's Contract with Geosource 3

Exploration's Assignment to Soudan and Soudan's Farm-Out Agreement With Marathon 6

Exploration's Contacts With Texas 7

Soudan's Contacts With Texas 8

Total CFP's Contacts With Texas and Relation to its Subsidiaries 9

REASONS WHY THE WRIT SHOULD NOT ISSUE 10

BRIEF OF THE ARGUMENT 12

1. Due Process Does Not Permit The Contacts of Total CFP's American Subsidiaries to be Imputed to Respondents 13

2. Exploration's Contract with Geosource is not a Sufficient Minimum Contact to Satisfy Due Process 16

3. Texas has no Special Interest in Exercising Jurisdiction Over Respondents and the Assertion of Jurisdiction Would be Unreasonable 21

CONCLUSION 22

PRAYER 23

TABLE OF AUTHORITIES

Page

CASES

Asahi Metal Industry Co. v. Superior Court, 480 U.S. 102 (1987) 12, 13, 21

Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985) 12, 13, 17

Calder v. Jones, 465 U.S. 783 (1984) 14

Cannon Manufacturing Co. v. Cudahy Packing Co., 267 U.S. 333 (1925) 14, 16

Hanson v. Denckla, 357 U.S. 235 (1958) 12

Hargrave v. Fibreboard Corp., 710 F.2d 1154 (5th Cir. 1983) 14, 15

Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 404 (1984) 20, 21

International Shoe Co. v. Washington, 326 U.S. 310 (1945) 12

Jones v. Petty-Ray Geophysical Geosource, Inc., 954 F.2d 1061 (5th Cir. 1992) 2

Lakeside Bridge & Steel Co. v. Mountain State Construction Co., 597 F.2d 596 (7th Cir.1979), *cert. denied*, 445 U.S. 907 (1980) 20

Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc. 473 U.S. 614 (1985) 18

Product Promotions, Inc. v. Cousteau, 495 F.2d 483 (5th Cir. 1974) 18

Prejean v. Sonatrach, Inc., 652 F.2d 1260 (5th Cir. 1981) 17

TABLE OF AUTHORITIES – Continued

Page

Reich v. Signal Oil & Gas Co., 409 F. Supp. 846 (S.D. Tex. 1974), *aff'd mem.*, 530 F.2d 974 (5th Cir. 1976) 22

Rush v. Savchuck, 444 U.S. 320 (1980) 14

Scherk v. Alberto-Culver Co., 417 U.S. 506 (1974) 18

Southwest Offset, Inc. v. Hudco Publishing Co., 622 F.2d 149 (5th Cir. 1980) 18

The Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972) 18

U-Anchor Advertising, Inc. v. Burt, 553 S.W.2d 760 (Tex. 1977), *cert denied* 434 U.S. 1063 (1978) 18

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) 12, 13, 21

STATUTES

28 U.S.C. § 1291 2

28 U.S.C. § 1330 2

28 U.S.C. § 1332 2

28 U.S.C. § 1441 2

RULES

Fed. R. Civ. P. 54(b) 2

Sup. Ct. R. 10.1 11

Sup. Ct. R. 14 11

Sup. Ct. R. 14.1(g) 1

STATEMENT OF THE CASE

As a result of petitioner's failure to supply the Court with a "concise" statement of those "facts material to the consideration of the question presented," Sup. Ct. R. 14.1(g), her failure to provide appropriate record references to those facts, and her gross misstatement of the record, respondents are compelled to restate the case. *Id.* 15.1.

1. Proceedings in the Courts Below

This state law wrongful death action was initially commenced by petitioner Brenda Jones in the 157th District Court of Harris County, Texas, as a result of the alleged death[1], in the Sudan, of her decedent, Evan A.M. Jones, a subject of the United Kingdom who worked abroad but claimed his residence in Scotland (Welborn Exh. 22; Beck 31; Jones Exh. 8).[2] The action was removed

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[1] Petitioner has never provided admissible evidence proving Evan Jones' death nor have any of the defendants below admitted, indeed they have vigorously contested, her claim to have been his wife. The trial court specifically stated that its orders reciting his death and her widowhood were not findings of fact or conclusions of law. (Tr. 38-41)

[2] In what is perhaps the most egregious of her many misstatements, petitioner incorrectly states that her decedent, Evan A.M. Jones, was "a Texas citizen" (Pet. at 2).

References to a name followed by a number refer to the named witness' deposition and the page cited. Reference to a name followed by "Exh." refers to the numbered exhibit accompanying that witness' deposition. References to "Dkt. No." are to the pleading or other matter bearing that docket entry number as recorded by the district clerk in the record of docket

to the United States District Court for the Southern District of Texas pursuant to 28 U.S.C. §§ 1330, 1332, and 1441 by respondent Total Exploration ("Exploration"), a French corporation. Two other French corporations, respondents Total Soudan ("Soudan"), a sister corporation of Exploration, and Total Compagnie Francaise des Petroles ("Total CFP"), the corporate parent of Exploration and Soudan, were later joined as defendants.[3] The three Total entities were sued and joined as parties separately and at different times. Jones' petition intentionally treats them as if they are one, almost always referring to "Total" rather than a specific party, causing unnecessary confusion and outright distortion of the record. Since the issue of corporate identity and separateness is involved, the correct corporate identity is most important. The district court dismissed respondents from the action for lack of personal jurisdiction (Dkt. No. 189). On petitioner's motion, the district court's order was later certified as final (Dkt. No. 278). Fed. R. Civ. P. 54(b). On appeal from this final judgment, 28 U.S.C. § 1291, the United States Court of Appeals for the Fifth Circuit affirmed. *Jones v. Petty-Ray Geophysical Geosource, Inc.*, 954 F.2d 1061 (5th Cir. 1992).

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entries. References to "Pet." are to the petition for writ of certiorari.

[3] Other defendants joined in the district court included the Republic of Sudan; Geosource, Inc. sued as Petty-Ray Geophysical Geosource; two instrumentalities of the Kingdom of Kuwait, International Energy Development Corporation (Sudan), Ltd. ("IEDC"), a Swiss corporation, and its corporate parent, Kuwait Foreign Petroleum Exploration Company, a Kuwaiti corporation, and; Marathon Petroleum Sudan, Ltd.

2. Statement of Facts

Exploration's Contract with Geosource

In November 1980, the Republic of Sudan, Public Petroleum Corporation, IEDC, and Exploration entered into a Production Sharing Contract contemplating the exploration for hydrocarbon substances in southern Sudan (Dkt. No. 118, Exh. E). Thereafter, Exploration invited several seismic contractors to bid as subcontractors on the exploration project (Jones 17; Margherita Exh. 1). One such contractor was Geosource, Inc., a Delaware corporation headquartered in Houston, Texas. The invitation to bid, however, was sent by telex from Exploration's office in Khartoum, Sudan to Geosource's office in the United Kingdom (Jones 18; Margherita 63 & Exh. 1).[4]

Although Geosource's legal department in Houston sent several communications to Exploration in Paris to finalize the terms of the agreement (Jones Exhs. 2, 5-7 & 14), all substantive and technical negotiations pertaining to the contract were conducted through and handled by Geosource's British office (Jones 23, 24, 27 and 28). Negotiations were conducted by telephone and telex between

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[4] Petitioner's statement that "most of the solicitation for the contract" occurred in Texas is simply wrong (Pet. at 15). Similarly, she is incorrect when she states that "TOTAL, by and through its agents made numerous trips to Houston for the purposes of soliciting bids on the Soudan [sic] project" (Pet. at 10). As explained below, no one from Exploration traveled to Texas to either solicit bids or negotiate the final contract between Exploration and Geosource. Furthermore, although other companies were invited to bid on the project, only Geosource responded (Margherita 22).

Geosource's office in the United Kingdom and Exploration's office in Paris and Khartoum (Jones 23-25; Margherita Exh. 4). No personnel from Exploration ever came to Texas during the course of negotiations. (Jones 82). Rather, all face-to-face negotiations occurred in Khartoum, Paris, London, and Venice (Jones 23; Margherita 62). All of the schedules to the contract were prepared in Geosource's U.K. office (Jones 28, 34). On July 16, 1981, the parties' agreement was executed in the United Kingdom (Jones 24, 27-28, 32-34, 37-39). Mr. Castellani, who executed the agreement for Exploration, did not even know Geosource had a Houston office; he dealt with Geosource U.K. (Castellani 17, 19).

Consistent with its understanding, Geosource was employed as an independent contractor (Jones 16-17 & Exh. 16). Under the contract, Geosource agreed to conduct geophysical surveys and acquire seismic data in southern Sudan and provide that data and data processing services to Exploration (Jones 16-17 & Exh. 16).[5] The contract contained choice of law, forum selection, and arbitration clauses, whereby all questions arising under the contract were to be resolved in London through binding arbitration in accordance with the rules of the International Chamber of Commerce with English law supplying the rule of decision (Jones Exh. 16).

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[5] Consistent with other factual misstatements in her petition, petitioner incorrectly states that Geosource acted as a subcontractor for Total CFP (Pet. at 2); the contract, however, was executed by Exploration in its own corporate name (Jones Exh. 16).

Since negotiations were with Geosource's U.K. office, no one connected with Exploration contemplated that Geosource's Houston office would be responsible for making arrangements to provide equipment or personnel to perform the contract (Jones 45-46; Margherita 32). Mr. Margherita, who negotiated the agreement for Exploration, was not aware that Geosource's Houston office would have any responsibility for administering or performing the agreement (Margherita 32). The contract, for example, called for Exploration to forward all required notices to Geosource's U.K. office; Geosource, in turn, was to send all notices to Exploration's office in Khartoum (Jones Exh. 16).

No aspect of Geosource's performance of the contract occurred in Texas or anywhere else in the United States, nor did the contract call for or contemplate performance in Texas (Jones Exh. 16). Obviously, the seismic work itself was to be performed in Sudan. All of Geosource's data processing work was done in the United Kingdom, and all written reports reflecting the seismic work were prepared by Geosource's U.K. office and sent to Exploration in Khartoum (Jones 63-64). All of Geosource's invoices were likewise prepared at and sent from its U.K. office, and all payments made by Exploration to Geosource in United States dollars were made to Morgan Guaranty Bank in London (Jones 63). To the extent Exploration paid Geosource in Sudanese pounds, payment was made in Khartoum (Jones 62-63). No payments were made through or to any bank in Texas (Jones 63).

Exploration's Assignment to Soudan and Soudan's Farm-Out Agreement With Marathon

Effective April 1, 1983, Exploration assigned its interest under the production sharing agreement to Soudan (Pommier Exh. 5). Notice of the assignment was sent to Geosource in Khartoum (Pommier Exh. 5). Soudan subsequently entered into a "farm-out" agreement with Marathon Petroleum Sudan, Ltd., a Delaware corporation having its principal place of business in Ohio, not Texas (Castellani Exh. 5). In negotiating the agreement, moreover, Soudan understood that it was dealing with an Ohio company (Castellani 29).

Prior to entering into the farm-out agreement, two "Total" representatives made a basic "farm-in" presentation to Marathon in Houston to acquaint it with the project in Sudan; no negotiations, however, took place in the Houston meeting, which lasted a "couple of hours" (Gerard 17). Instead, all negotiations and the final execution of the agreement occurred at "Total's office" in Paris (Gerard 25-28, 33-34). This contract, moreover, contained a choice of law clause specifying that English law would govern all disputes arising in connection with the agreement, and provided for binding arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Geneva, Switzerland (Castellani Exh. 5; Gerard Exh. 1). In any event, no part of this agreement was performable in Texas or related to the alleged death of Evan Jones in Sudan (Castellani Exh. 5).[6]

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[6] As petitioner points out, Soudan directed Geosource to send certain seismic tapes to Marathon at a Marathon office in

Exploration's Contacts With Texas

Exploration has never been licensed to do business in Texas, nor has it ever sought such licensure (Pommier 84). Exploration owns no property, real or personal, having its situs in Texas (Pommier 84-85). It has never prospected or searched for oil, other hydrocarbons, or any substance in Texas (Pommier 84); nor has it ever rented or leased any property in the state, or paid any tax to the State of Texas or any of its political subdivisions (Pommier 84-85). It has never sold any product in Texas, nor has it ever advertised or authorized any person to advertise on its behalf in Texas (Pommier 88). Exploration has never had any banking or financial arrangements with any Texas banks (Pommier 68, 70-71). It has never employed any Texas resident at any time on any project anywhere (Pommier 69-70).

Although Exploration has had other contractual relations with certain companies which have offices in Texas, each of those relationships involved work on projects outside the United States, and none of these contractual relationships were related to Exploration's work in Sudan pursuant to its contract with Geosource (Pommier 30-39 & Exh. 8). For example, Exploration contracted with International Shipping Co. to perform drilling work in the Mediterranean, and with Triton Oil & Gas to do research in France (Pommier 30 & Exhs. 8, 18-19). Exploration has also been a co-interest owner in foreign drilling contracts with Terra Resources in Columbia

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Houston (Pet. at 13). These instructions, however, were sent to Geosource in Khartoum, not Houston (Pommier Exh. 28).

(Pommier 31 & Exh. 8), Sedco Offshore, Inc. off of the Ivory Coast (Pommier 32 & Exh. 8), and Pecten Equatorial Guinea Co. in Equatorial Guinea (Pommier 34-36 & Exhs. 8 & 9). For these and other projects outside the United States, Exploration has ordered equipment and supplies which were shipped from Houston (Pommier 40-51 & Exhs. 10-18). None of these transactions, however, were in any way related to Exploration's contract with Geosource or the alleged death of petitioner's decedent in Sudan (Pommier 43).[7]

Soudan's Contacts With Texas

Like Exploration, Soudan has never had nor sought permission to do business in the State of Texas (Castellani 76). Soudan has never owned property, whether real or personal, in Texas; has never leased or rented property in Texas; has never maintained a telephone listing or an office facility in Texas; has never prospected for hydrocarbons or other substances in Texas; has never had any banking relationship with any financial institution in Texas; has never paid any taxes to the State of Texas or any political subdivision of the state; and has never employed any Texas resident (Castellani 74-75). As petitioner concedes, Soudan "does business only in the Sudan" (Pet. at 3).

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[7] Nothing of record establishes where any of these companies were incorporated or where Exploration's agreements with them were negotiated or executed.

Soudan has purchased certain equipment from two firms having offices in Houston, Texas. All of the equipment purchased from these two companies, however, was shipped to the Sudan (Castellani Exhs. 6-8, 10-11, 13-15). Soudan's contacts with both companies consisted of nothing more than remitting payment to Texas banks.[8]

Total CFP's Contacts With Texas and Relation to its Subsidiaries

The record reflects that Total CFP, like Exploration and Soudan, does not have an office in Texas (Sirven 53). Total CFP, moreover, has never contracted with any Texas resident, or bought or leased any property situated in Texas (Sirven 28). Total CFP owns more than 50% of the stock in eleven American companies that have offices in Texas; none of these subsidiaries, however, are incorporated in Texas (Sirven 9). Two of these subsidiaries, Total Energy Resources, Inc. and Total American, Inc., are holding companies. Total CFP owns 100% of Total Energy Resources, which owns 100% of Total American, which owns Total Minerals Corp. and Total Minatome Corp. (Sirven 11, 12). Only Total Minerals, which is engaged in uranium exploration and production in Texas, and Total Minatome, which is engaged in both on- and off-shore drilling activities in and near Texas and Louisiana, actively do business in Texas (Sirven 12, corrections sheet at 2).

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[8] The record is unclear as to whether these purchases were in any way related to the contract with Geosource, but there is nothing even remotely suggesting this equipment was related to the alleged death of Evan Jones.

Neither Exploration nor Soudan own any interest in any of these companies, are involved in their management, or have any contractual relationships with them (Sirven 11). One of the nine directors of Exploration, Mr. Gourgouillon, is also a director of Total Energy Resources and Total Minatome. There are no other common directors between any of Total CFP's eleven American subsidiaries and Exploration and Soudan (Sirven 58).

Exploration and Soudan are separate corporations (Sirven 22). Mr. Vaillaud, the president of Exploration, is a member of Total CFP's executive committee (Sirven 14). He is also a member of the board of directors of both Exploration and Soudan (Sirven 15). Mr. Vaillaud is the only common director or officer shared by Exploration and Soudan (Sirven 16).

Total CFP is not and has never been involved in the day-to-day affairs of either Exploration or Soudan (Sirven 13, 57-58). There is no uniform policy of operation between Total CFP's subsidiaries (Sirven 18). Each subsidiary prepares its own budget and financial statements, maintains its own financial records, pays its own bills, controls its own employees, and is responsible for its own taxes and accounts payable (Sirven 32-34, 57-58). Respondents are French corporations; under French law a parent corporation is not liable for debts incurred by its subsidiaries (Sirven 4, 22-24; corrections sheet at 1).

REASONS WHY THE WRIT SHOULD NOT ISSUE

The writ should not issue for a multitude of reasons. In the first place, the petition is unintelligible and does

not conform to the requirements of Supreme Court Rule 14.[9] Indeed, the petition itself is so incoherent that deciphering the basis of petitioner's complaint is nearly impossible. More importantly, however, petitioner has not set forth any "special or important reasons" for granting the writ. Sup. Ct. R. 10.1. Petitioner, for example, does not point to any conflict between the Fifth Circuit's decision in this case and that of another United States court of appeals or any state court of last resort. *Id.* 10.1(a). Finally, as explained immediately below, both the district court and Fifth Circuit correctly applied settled principles and properly concluded that respondents did not have sufficient contacts with the State of Texas to justify the assertion of personal jurisdiction.

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[9] Petitioner has failed even to list the parties to this proceeding. Furthermore, the caption to the petition does not supply this information since "Petty-Ray Geophysical Geosource," listed as a respondent on the cover of the petition, was not a party in the Fifth Circuit. Indeed, Exploration, Soudan, and Total CFP are not sure which, if any of them, are actually before this Court as respondents. All of these entities, however, are listed as "respondents" in this brief merely to ensure that they are heard in the event each or any of them is deemed to be properly before this Court. Additionally, petitioner has failed to identify the basis for federal jurisdiction in the lower courts; failed to supply the citation to the opinion in the court below; failed to state – much less set forth – the constitutional provision at issue in the case; failed to include all required material in the appendix; and, in general, failed to present "with accuracy, brevity, and clearness" that which is necessary to decide the questions presented. For these reasons alone, the petition should be denied. Sup. Ct. R. 14.5.

BRIEF OF THE ARGUMENT

The Due Process Clause protects a nonresident defendant's "liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.' " *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)). It thus protects a nonresident defendant from the "burdens of litigating in a distant or inconvenient forum." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980). In a series of cases beginning with *International Shoe*, and culminating most recently in *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987), this Court has defined the limits of state court jurisdiction over nonresidents. Reduced to their essentials, the Court's decisions require that a nonresident defendant "have certain minimum contacts with the forum State such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " *International Shoe*, 326 U.S. at 316.

Such contacts exist only when the defendant does something purposeful to avail himself of the privilege of conducting activities in the forum, "thus invoking the benefit and protection of its laws." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). "This 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts, [citations omitted] or of the 'unilateral activity of another party or a third person.' " *Burger King*, 471 U.S. at 475. Jurisdiction is proper only when "the contacts proximately result from actions by the defendant *himself* that create a 'substantial connection'

with the forum State." *Id.* (original emphasis). Those activities, whether they consist of direct acts within or conduct outside the forum, must justify the conclusion that the defendant should reasonably anticipate being haled into court there. *World-Wide Volkswagen*, 444 U.S. at 297 (1980). "By requiring that individuals have 'fair warning that a particular activity may subject them to the jurisdiction of a foreign sovereign,' [citation omitted], the Due Process Clause 'gives a degree of predictability that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.' " *Burger King*, 471 U.S. at 472.

These principles are particularly important in cases such as this. As the Court has recognized, " 'Great care and reserve should be exercised when extending our notions of personal jurisdiction into the international field.' " *Asahi Metal Industry*, 480 U.S. at 115. The "unique burdens" placed upon one who must defend himself in a foreign legal system thus have significant weight in assessing "the reasonableness of stretching the long arm of personal jurisdiction over national borders." *Id.* at 114.

1. Due Process Does Not Permit The Contacts of Total CFP's American Subsidiaries to be Imputed to Respondents.

Petitioner's principal argument is that respondents and all other subsidiaries of Total CFP should be treated as one for jurisdictional purposes since, she claims, they were either agents of their parent or each other or mere

"conduits" for their parent's business.[10] In this case, however, petitioner must go one step beyond simply imputing the contacts of a subsidiary to a parent corporation; here, she must first impute the contacts of Total CFP's American subsidiaries to Total CFP, and then impute those contacts to Exploration and Soudan, notwithstanding that the activities of these American subsidiaries are entirely unrelated to the claims she asserts. The argument fails, both factually and legally.

In deciding whether a nonresident has sufficient minimum contacts to warrant the assertion of jurisdiction over his person, "Each defendant's contacts with the forum State must be assessed individually." *Calder v. Jones*, 465 U.S. 783, 790 (1984); *see also Rush v. Savchuck*, 444 U.S. 320, 332 (1980). Thus, "a foreign parent corporation is not subject to the jurisdiction of a forum state merely because its subsidiary is present or doing business there; the mere existence of a parent-subsidiary relationship is not sufficient to warrant the assertion of jurisdiction over the foreign parent." *Hargrave v. Fibreboard Corp.*, 710 F.2d 1154, 1159-61 (5th Cir. 1983) (citing *Cannon Manufacturing Co. v. Cudahy Packing Co.*, 267 U.S. 333 (1925)). Instead, to obtain jurisdiction over a foreign corporation based upon the contacts of a subsidiary or sister corporation with the forum, a plaintiff must prove "control by the parent over the internal business operations and

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[10] The Fifth Circuit did not reach this issue, finding that respondents' contacts with Texas, even when considered en masse, could "not withstand constitutional scrutiny." 954 F.2d at 1069-70 n.12. Insofar as respondents can determine, petitioner does not challenge this holding.

affairs of the subsidiary in order to fuse the two for jurisdictional purposes." *Id.* at 1160. Proof of this sort of control requires more than proof of ownership of all of the subsidiary's stock; commonality of officers and directors is likewise insufficient. *Id.* Rather, the plaintiff must prove that the subsidiary is merely the alter-ego of the parent. *Id.* at 1160-61.

Here, the evidence establishes that Total CFP and its subsidiaries are separate, autonomous entities. They maintain their own corporate identities, have separate management, are financed independently, and maintain separate financial records. Petitioner has made no showing that Total CFP interferes, in any way, with the internal management of any of its subsidiaries. At most she has shown Mr. Vaillaud to be president of Exploration and a member of Total CFP's executive committee. Similarly, petitioner argues that "Total" has interlocking directorates but the record shows Mr. Vaillaud is the only common director or officer shared by respondents.

Furthermore, Total CFP's subsidiaries did not hold themselves out as "Total CFP" or "the Total Group" as petitioner claims (Pet. at 7-9). On the contrary, Exploration's agreement with the Republic of Sudan was in its own name (Dkt. No. 118, Exh. E), as was its contract with Geosource (Jones Exh. 16). Similarly, both Exploration and Soudan contracted in their own names in the assignment from Exploration to Soudan (Pommier Exh. 5), and Soudan contracted in its name in the "farm-out" agreement with Marathon (Castellani Exh. 5). Finally, both Exploration and Soudan acted in and used their own

names in their dealings with Geosource and other companies (Margherita Exhs. 1-2, 4-6 & 8; Pommier Exhs. 1-18; Castellani Exhs. 6-15).

There is no evidence in the record that either Exploration, Soudan, any other subsidiary of Total CFP, or Total CFP itself has disregarded corporate formalities, such that any of Total CFP's subsidiaries might be treated as its "alter-ego"; that either Exploration or Soudan acted "in an agency relation" for Total CFP or each other; or that any of Total CFP's subsidiaries "act as conduits for one another" (Pet. at 8). Had the lower courts accepted petitioner's argument, and disregarded Fifth Circuit precedent construing this Court's decision in *Cannon*, respondents would have been denied "fair warning" that the unrelated activities of separate corporate entities would subject them to the jurisdiction of a Texas court.

2. Exploration's Contract with Geosource is not a Sufficient Minimum Contact to Satisfy Due Process.

Petitioner's secondary argument is that Exploration – and, apparently, Soudan and Total CFP as well – are subject to jurisdiction in Texas simply because Exploration contracted with Geosource, an entity which happened to be headquartered in Houston. Petitioner's cause of action for the alleged death of Evan Jones sounds in tort, however, and does not arise out of the performance or breach of this contract. Thus, the relationship between this tort suit and this "contractual contact" is more tenuous than if the suit had arisen from a "tort contact."

Prejean v. Sonatrach, Inc., 652 F.2d 1260, 1270 n.21 (5th Cir. 1981).

Petitioner, moreover, has failed to establish that the Exploration/Geosource contract is itself a sufficient relationship between Exploration and Texas to subject Exploration to the jurisdiction of a Texas court. As this Court has recognized, a nonresident defendant's contract with a resident of the forum cannot alone establish sufficient minimum contacts to support jurisdiction. *Burger King*, 471 U.S. at 478. Instead, this Court has

> emphasized the need for a "highly realistic" approach that recognizes that a "contract" is "ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction". [citation omitted]. It is these factors – prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing – that must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum.

Id. at 479.

In this case, the "contemplated future consequences" of the agreement consisted of nothing more than the parties' performance of their agreement in the Sudan and Europe, not Texas; the "prior business negotiations" tied to this "future consequence" of performance took place in Europe, not Texas; and the contract that "tied" prior negotiations to the future consequence of performance was formed in Europe, not Texas. There is simply no

evidence that Exploration even anticipated, much less contemplated, any future consequence occurring in Texas as a result of its contract with Geosource.

Indeed, the terms of the parties' contract are inconsistent with any intention by Exploration to avail itself of the benefits and protection of Texas law. The parties, for example, did not provide that Texas law would govern the construction of the contract, nor did they select Texas as a forum in which disputes arising under the contract would be resolved.[11] Instead, Exploration and Geosource agreed that English law would govern the validity, interpretation, and performance of the contract, and also agreed to arbitrate any dispute between them in London.[12]

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[11] State and federal courts alike have recognized that the place of contracting and the law governing the contract, while not determinative, are clearly relevant to the issue of whether the contracting parties, including the defendant, have availed themselves of the benefits and protection of the law of the forum. *E.g.*, *Southwest Offset, Inc. v. Hudco Publishing Co.*, 622 F.2d 149, 152 (5th Cir. 1980) (per curiam); *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483, 495 (5th Cir. 1974); *U-Anchor Advertising, Inc. v. Burt*, 553 S.W.2d 760, 763 (Tex. 1977), *cert. denied*, 434 U.S. 1063 (1978).

[12] Both the forum selection and arbitration clauses of the contract are valid and enforceable. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985); *Scherk v. Alberto-Culver Co.*, 417 U.S. 506 (1974); *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972). As such, petitioner's suggestion that Exploration could have brought suit against Geosource in Houston for breach of the contract is not only irrelevant, it is wrong (Pet. at 5-6).

Petitioner, however, argues that Exploration has sufficient contacts with Texas because Geosource was required to purchase materials and equipment in Texas in order to perform its contract with Exploration. (Pet. at 12-13). This argument must fail, both factually and legally.

In the first place, it is not supported by the record. While the contract required Geosource to provide certain equipment, its place of purchase was not specified (Jones Exh. 16). The contract did not mention Texas as a source of equipment or personnel. Instead, Annex B to the contract included a "Mobilization/Demobilization" section which referenced "USA," not Texas, as the tentative origin of various supplies; Europe, Malta, and Pakistan were the only other places mentioned (Jones Exh. 16). Moreover, Geosource understood "origin," to mean the place of manufacture, not purchase (Beck 70, 97).

Geosource's standard procedure was to purchase all equipment in Europe through its U.K. purchasing department (Jones 45-47). Geosource purchased the automotive equipment, for example, in Marseille (Beck 72). Mr. Welborn of Geosource was unaware of any equipment purchased in Texas for this project (Welborn 14-17). Furthermore, Geosource made no arrangements in Houston to hire employees (Beck 74), no Texas resident had any thing to do with Geosource's performance of the agreement in Sudan (Jones 43), and only one citizen of the United States worked on the project (Beck 74).

More importantly, these "contacts," even if they could have been proven, would not relate to petitioner's cause of action as there is no claim that the equipment or

materials allegedly purchased by Geosource in Texas were in any way connected with Jones' alleged death. In *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 404 (1984), the Court rejected a similar argument, holding "that mere purchases, even if occurring at regular intervals, are not enough to warrant a State's assertion of in personam jurisdiction over a nonresident corporation in a cause of action not related to those purchase transactions." *Id.* at 418. Surely, if such activity by a nonresident defendant is an insufficient contact for the purposes of due process, the same activity on the part of a resident of the forum, undertaken unilaterally, is likewise insufficient.

Exploration neither knew nor cared whether Geosource would be purchasing equipment or hiring Texas residents in Texas or elsewhere since these were matters left to Geosource's sole discretion (Castellani 38-41, 51; Jones Exh. 16). Petitioner has made no showing that Exploration had any control whatsoever over Geosource's alleged decision to hire employees and purchase equipment and materials in Texas or elsewhere. When, as here, one contracting party has absolute control over the manner and place of his own contractual performance, that party's decision to undertake activities in the forum is unilateral conduct; it is not sufficient to establish that the other, nonresident party has invoked the benefits and protection of the forum state's laws. *Lakeside Bridge & Steel Co. v. Mountain State Construction Co.*, 597 F.2d 596, 603 (7th Cir.1979), *cert. denied*, 445 U.S. 907 (1980).

In the final analysis, petitioner has shown only that Exploration may have known that it was contracting with the British office of a Texas company. Such knowledge,

however, whether actual or constructive, is no evidence that Exploration purposefully availed itself of the benefits and protection of Texas law. *Cf. World-Wide Volkswagen*, 444 U.S. at 297-98 (mere foreseeability that nonresident's product may find its way to forum is insufficient contact).[13]

3. Texas has no Special Interest in Exercising Jurisdiction Over Respondents and the Assertion of Jurisdiction Would be Unreasonable.

In assessing whether a nonresident's contacts with the forum are sufficient to satisfy traditional notions of fair play and substantial justice, it is also appropriate to consider the interest of the forum state in adjudicating the controversy. *Asahi Metal*, 480 U.S. at 113; *World-Wide Volkswagen*, 444 U.S. at 292. This is particularly true when, as here, the plaintiff's cause of action is for the alleged wrongful death of a foreign national occurring in a foreign nation. Here, as in *Asahi Metal*, the Court "must

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[13] Petitioner also suggests that Soudan's farm-out agreement with Marathon is itself a sufficient minimum contact to establish jurisdiction over all three respondents (Pet. at 14). The relationship between this contractual "contact" and her cause of action, however, is even more tenuous than Exploration's contractual "contact" with Geosource. As is the case with the Exploration/Geosource contract, the farm-out agreement was negotiated, executed, and performed abroad. Moreover, the brief presence of two unidentified "Total" representatives in Houston prior to meaningful negotiations leading to the formation of the farm-out agreement is not a sufficient contact with Texas for the purposes of petitioner's suit against respondents, which does not arise out of or relate to this "contact." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. at 418.

consider the procedural and substantive policies of other *nations* whose interests are affected by the assertion of jurisdiction by the [Texas] court." 480 U.S. at 115 (original emphasis). In this case, for example, it is far from certain Texas law should govern the question of whether three French corporations should be held liable for the alleged death of a subject of the United Kingdom in the Republic of Sudan, and if so, to what extent. Although petitioner claims to be a Texas citizen, on the facts of this case, "Texas has no 'special' interest in granting relief to its citizens against a foreign corporation on a cause of action that arose under the laws of a foreign government for conduct outside the United States." *Reich v. Signal Oil & Gas Co.*, 409 F. Supp. 846, 851 (S.D. Tex. 1974), *aff'd mem.*, 530 F.2d 974 (5th Cir. 1976).

CONCLUSION

Respondents' "contacts" with Texas, such as they are, cannot be considered anything but "random," "fortuitous," and "attenuated." The mere fact that one of them contracted with a Texas based corporation is not enough to subject any of them to the jurisdiction of a Texas court or a federal district court sitting in Texas. The State of Texas, moreover, can claim no legitimate interest in providing a forum for an action arising out of a tort allegedly committed against a British citizen by a French corporation in Sudan. To hold otherwise would stand the notion of minimum contacts on its head.

PRAYER

For these reasons, the petition for writ of certiorari should be denied.

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